Award No. 940
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Arbitrator: Terry A. Bethel
June 4, 1998
OPINION AND AWARD
Introduction
This case concerns the discharge of grievant Michael Ubik for possession of a firearm on company property. The case was tried in the company's offices on April 13, 1998. Patrick Parker represented the company and Mike Mezo presented the case for grievant and the union. Grievant was present throughout the hearing and testified in his own behalf. The parties submitted the case on final argument.
Appearances
For the company:
P. Parker -- Section Mgr., Arbitration and Advocacy
R. Cayia -- Manager, Union Relations
W. Jones -- Section Manager, Safety
B. Doan -- Plant Protection Officer
R. Nanney -- Security Chief
G. DeArmond -- Contract Admin. Resource, Union Rel.
For the union:
M. Mezo -- President, Local 1010
T. Hargrove -- Vice President, Local 1010
D. Shattuck -- Secy. Grievance Committee
L. Aguilar -- Vice Chrm., Grievance Committee
M. Ubik -- Grievant
G. Busick -- Griever
C. Hoot -- Steward
M. Beckman -- Assistant Griever
A. Jacque -- Chair, Grievance Committee
L. Krulhowski
H. Golden
R. Pemesnik
L Gutierrez
Background
This is a difficult, though not factually complex, case. Most of the facts are not in dispute. At the time of his discharge, grievant had worked for the company in excess of 27 years, with most of his service in the Plant 1 machine shop. On Thursday, January 22, 1998, at about 11:30 a.m., grievant was leaving the plant in his automobile in the company of several coworkers. He testified that they had been involved in a training class in the morning and were leaving to go to lunch. Security Officer Barbara Doan stopped grievant's car for a random search and discovered a loaded handgun in the unlocked glove compartment of his car. According to plant Security Chief Nanney, the weapon was a Grindel P12.380 caliber, with 10 rounds in the magazine and 1 in the chamber. The gun did not have a safety. Doan said Grievant told her he had forgotten about the gun and asked if he could simply take it home on his lunch hour and forget about it. Doan declined and called her superiors.
Grievant said he had taken the gun with him for protection the previous Sunday when he visited a tenant with whom he was having a dispute. Grievant said he has a permit for the gun and, when he has it with him, he carries it on his person and does not put it in the glove box. However, after visiting the tenant he realized the car needed gas. He said when he got back in the car he took the gun out of his pocket and put it on the seat beside him. Then, when he stopped for gas, he put it in the glove box rather then take it into the station with him. Grievant said he drove home after getting gas and forgot about the gun in the glove compartment. It was still there the following Thursday, four days later, when Doan stopped him for the vehicle search. Grievant said that ordinarily, he would have driven his truck to work, but he took the car that day because he had been having problems with the truck. It was not clear from the record whether he had also driven the

car other days that week. The company says that grievant's conduct violated rule 132-f, which prohibits "Unauthorized use of, possession of, or storing of weapons or explosives on company property," and that discharge is the appropriate penalty.

Most of the time in the lengthy hearing was devoted to evidence or argument about previous cases and the discipline meted out for similar offenses. The problem, as the union sees it, starts with Inland Award 860, in which I upheld the discharge of an employee who had secreted an unloaded handgun inside his work area. In the course of that opinion, I alluded to two previous opinions by former permanent umpire Burt Luskin, Inland Awards 636 and 637, both decided in December, 1977. Luskin upheld the discharges in both cases and, in Award 860, issued in 1992, I said, "It appears to be the case that since these two awards, the company has consistently discharged every employee who has been caught with a gun inside the company gates." More recently, in Inland Award 935, I considered the discharge of an employee charged with violating the same rule as the grievant in the instant case, though in Inland Award 935, the employee had brought firecrackers, not a gun, onto company property. In that opinion, I said, inter alia, "It is true, as the company points out, that it has a consistent practice of discharging employees who bring guns onto company property, even if the gun is left in the car and even if it is not used in a threatening manner against other employees." The problem, the union says, is that the company does not have a consistent practice of discharging employees found with guns or other weapons. Rather, the union says that the company has consistently looked to other factors in deciding whether an employee caught with a gun should be fired. The grievant in this case, the union argues, deserves the same consideration. And, since the union says that the two principal mitigating factors apparently considered by the company are length of service and work record, and because this grievant has very long service and a good work record, he should not have been discharged.

As I indicated in both Inland Award 860 and Inland Award 935, my impression has been that the company has always discharged employees found in possession of a gun on company property. Part of that impression may have been gleaned from the facts of Inland Award 637, which produced a particularly harsh result. Nevertheless, the union says that I must also have been influenced by company assertions in the hearings for Inland Award 860 and Inland Award 935. In the latter case, for example, I did say that here was a consistent practice of discharge, "as the company points out," which suggests the company made such an assertion. But the union also points to certain evidence I received in the hearing for Award 860. One of the company's exhibits in that case was headed "Inland Steel Gun Cases After Arbitrations 636 and 637." It was introduced in the instant case as Union Exhibit 1. The exhibit listed 20 cases and said that of those, 13 had been fired, 1 had retired, 1 had quit, 1 was fired and reinstated on a last chance agreement, 2 received a 30 day discipline, 1 received a 10 day discipline (for a starter pistol) and another only a warning letter (for a starter pistol.) The union says that this exhibit mistakenly contributed to my impression that the company typically fires employees who bring a gun onto company property.

Actually, the exhibit itself may not have had that effect, since about 35% of the employees identified on it were not discharged. Nevertheless, the union says that the exhibit was still misleading, in part because it did not account for all of the circumstances of those cases, and in part because some of the information on the exhibit was inaccurate. In two of the cases, for example, the employees were fired, but they did not request a hearing in a timely fashion, so no grievance was filed on their behalf. In another, an employee was terminated, but was subsequently rehired as a new employees, perhaps as a result of an EEOC settlement in which the employee (a woman) alleged that her discharge was harsher punishment than some men received for the same offense. And the union presented evidence that the employee listed as "quit" did not actually quit, but continued to work for the company. The company acknowledged that this part of the exhibit was an error. The union went through each case for which records were available. It pointed out that in some of the discharge cases, the employee had brandished the weapon or threatened another employee with it. One discharge case involved two offenses (with a starter pistol) and others involved short service employees, employees with poor work records, or a combination of a gun and alcohol offenses. In some cases of reinstatement, the company referred to length of service of the reinstated employee and sometimes distinguished other cases by pointing to length of service. The union also introduced evidence about two 1976 cases (before Awards 636 and 637) in which long service employees found in possession of guns were not discharged. The union argued that the facts demonstrated that the company has not always fired employees found in possession of a gun and, especially where the violation was for mere possession, which was the case here, the company's consistent practice has been to take other factors - specifically, length of service and work record - into account. <FN 1>

The company acknowledged in its closing argument that it has not always fired employees who have been found with a gun, though it suggested it should have discharged some of the employees it kept. The company argues, however, that the instant case calls for discharge for two reasons. First, the company cites an increase in work place violence, often involving having coworkers turning guns against each other. Second, and even more important, the company notes that changes at the plant have meant that employees now routinely drive their cars into the plant and park near their work sites. Many - though not all - of the previous cases cited involved employees who had left guns in parking lots outside the plant gates. The guns were not necessarily inaccessible in the parking lots, but they would have been harder to reach. Even the company did discharge employees who had left guns in the parking lot and in Award 637, Arbitrator Luskin upheld that action.

The company says that it wants its role against guns to have maximum deterrent value and that it cannot afford to make exceptions, even for long service employees with good work records. Manager of Union Relations Bob Cayia says that in his tenure - which began after all of the cases cited in Union Exhibit 1 - he has made his position known to the union. Cayia said that he is leery of making exceptions to the rule because doing so would put him on a "slippery slope" that could compromise the safety of the 9000 employees who work at the company. He also said that if aggravating or mitigating circumstances are taken into account, he believes that employees would be more willing to violate the rule and there would be an increased number of infractions. The company also suggests that a defense like grievant's - that he forgot the gun was in his car - is impossible for the company to test. The better tact, the company suggested, is merely to take a consistent position of discharging employees who bring guns onto the property. As to the latter argument, the union says that credibility determinations are an ordinary part of arbitration, and points out that I rejected the employee's story that he "forgot" about the gun in Inland Award 860 and accepted the employees story that he "forgot" about the firecrackers in Award 935. Obviously, the union says, it is possible to make a decision about credibility in such cases.

Discussion

Inland Award 860 does not say that every gun possession case will necessarily justify discharge. Indeed, in construing the same rule in Inland Award 935, I reinstated an employee who had forgotten about firecrackers he left in the trunk of his car. As the union suggests, whether just cause for discharge exists depends on the facts and circumstances of each case, a principle these parties have obviously recognized in previous gun-related cases. My task, then, is to consider the facts at issue here.

I was not overwhelmed with grievant's story about why the gun was in his car. As the union says, credibility determinations are an ordinary part of arbitration and, as I have suggested in previous awards, it is not always easy for an arbitrator to explain why he believes or disbelieves a particular witness. In this case, I did not understand why grievant removed the gun from his pocket and placed it on the seat of the car after his confrontation with the tenant, since he said that when he has the gun with him, he always carries it on his person. Nor, if the gun could be concealed in his jacket pocket, do I understand why put it in the glove compartment of his car. Nevertheless, though I have some doubts, I am willing to accept his story. That does not mean, however, that this is a "no-fault" case, a description offered several times by the union. Grievant, in fact, was not without fault. It was grievant's gun and grievant's car. And, if his story is to be believed, it was grievant who put the gun in the glove compartment. It was grievant, then, who had the responsibility to remember that it was there. It may be, as the union argues, that grievant did not have the specific intent to violate rule 132f, but that does not mean that his actions were not deliberate. Having the gun in the car wasn't an accident; he intentionally put it in the car and he intentionally put it in the glove compartment. As I suggested in another Inland Award, where a grievant claimed that a friend left a case of beer in her trunk without her knowledge, an employees does not have to specifically intend to violate a particular rule. In some cases, it is sufficient if an employee deliberately takes action that leads to the rule violation, even if part of the employee's conduct was negligent. In the instant case, then, grievant does not claim that someone put the gun in his car without his knowledge or that he borrowed a car that, to his surprise, had a gun hidden in the glove compartment. Rather, this involves grievant driving his own car (albeit one often used by his wife) in which he had left his own gun. Moreover, this was not merely a momentary lapse of memory, since the gun had been in the car for four days. Clearly, as the owner of the gun, grievant has some responsibility for its safekeeping and has to bear responsibility when he takes it someplace it does not belong.

What matters most in this case, however, is the fact that grievant had the loaded gun - even with a chambered round, ready to fire - inside the plant gates. I recognize, as the union argues, that the gun was not actually inside a work area, as was the case in Inland Award 860. But the gun was still accessible and,

unlike the gun in Inland Award 860, this gun was loaded. Frankly, I cannot say whether there has been an increase in work place violence involving guns or whether news coverage has simply created that impression. But whether there is an increase or not, the company obviously has notice of numerous circumstances that underscore the danger of guns in the work place. Given the advent of in-plant parking, the company has a legitimate interest in banning guns and in exacting discipline against those who violate the rule. This does not necessarily mean that there are never mitigating circumstances or that discharge is always appropriate. I have some sympathy for grievant and I understand the severe consequences a discharge has for him. However, given the facts at issue here, I find that length of service and work record are not sufficient reasons for me to overrule the company's action. In this case, mitigating circumstances, if any, must go to the character of the offense, and not merely the equitable factors of service and work record. I realize that those two factors often play an important role in discharge cases and, as the parties know, I have frequently made use of them. In these circumstances, however, I am not persuaded that they are enough for me to set aside the company's decision to discharge. Nor do I believe that the company's action in the previous cases cited by the union - all of them more than ten years old - required the company to allow grievant a second chance.

AWARD

The grievance is denied.

/s/ Terry A. Bethel

Terry A. Bethel

June 4, 1998

<FN 1> The company objected to many of the union's exhibits, which were grievance settlement documents where the case had been settled without prejudice or without precedent. The objection was based on a Memorandum of Understanding entered into between the parties on January 15, 1996, which prohibits them from introducing into evidence grievances that were settled without prejudice or without precedent. However, Mr. Mezo asserted, and Union Relations Manager Cayia acknowledged, that the company agreed it would not use this agreement to prevent the union from denying the existence of a fact asserted by the company. Thus, if the company asserted that it had a consistent practice of always firing employees for gun possession, the union could introduced settled grievances to the contrary, even though they might have been settled without prejudice or without precedent. The company's advocate argued that use of the settled grievance in the instant case would violate the spirit of the agreement, since the company was sometimes willing to settle cases only if they would not surface again to prejudice the company's position. That argument, however, would be better addressed to Cayia and Mezo, since they were the ones who agreed that settled grievances might be used for some purposes. The real point of contention here is that the company did not necessarily argue in this case that it had a consistent practice of always firing employees for gun possession. Cayia asserted that he had always done so in his tenure as Union Relations Manager, but that does not appear to be inconsistent with any settled grievance. All of the union's examples of exceptions precede Cayia's tenure. The union argued, however, that the company did take that position in Inland Award 860, and apparently reiterated it in Inland Award 935. My own awards, the union said, demonstrated my belief that the company had such a consistent practice, and that belief had to have been gleaned from evidence in those two cases, including the list of cases that followed Inland Awards 636 and 637. Thus, the union says that it is appropriate for them to counter that evidence in this case. The company points out that it did not make the same consistent practice argument in this case and that the appropriate place to have countered its previous exhibits would have been in the cases in which they were introduced. Ordinarily, I would agree with the company's position. The place to counter evidence is in the case in which it is introduced. I have, however, heard at least three cases involving rule 132-f and my strong impression was what I recorded in both Award 860 and 935 - I believed the company had a consistent practice of always discharging employees found with a gun on company property, although I had not necessary adopted that view in my opinions. Obviously, after a case concludes, it is to late to introduce evidence to correct the record in that case. Nevertheless, it was appropriate in the instant case for the union to point out that my view was mistaken since, otherwise, I would have decided this case under a mistaken impression of the company's practice.